UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/655
20 July 1994

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 655

Case No. 695: HABASH

Against: The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 12 May 1992, Abdallah Mohamad Habash, a staff member of the United Nations Relief and Works Agency for Palestine Refugees, hereinafter referred to as UNRWA, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 28 August 1992, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal, inter alia, to:

"...

7. Rescind all the disciplinary and financial measures which were applied against me.

8. Reinstate me to a post with a grade in parity to Area Registration and Distribution Officer.

9. Compensate me for all the financial recurring losses which were being entailed since my demotion.

..."

Whereas the Respondent filed his answer on 22 January 1993;

Whereas, on 9 March 1994, the President of the Tribunal requested the Respondent to produce an answer on the merits, which he did on 20 April 1994;

Whereas the Applicant submitted an additional undated document;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA as an area staff member on 1 September 1964, as Assistant Distribution Team Leader at the grade 2, step 1 level, on a temporary indefinite appointment. He served thereafter at the Jerusalem Field Office of the West Bank, having reached the grade 9, step 1 level, with the functional title of Area Registration and Distribution Officer.

During the period 16 May to 15 June 1989, the Agency undertook an operational audit of the Supply, Distribution and Warehousing Operations in the West Bank Field, being concerned about pilferage which was taking place there. In a surprise visit to the Jerusalem Area Stores, an auditor discovered irregularities, including the excessive loading of commodities on trucks for daily distribution.

The auditor made a second surprise visit to the Jerusalem Area Stores and found additional irregularities. He recommended that a Board of Enquiry be established to investigate the distribution operations of the Jerusalem Area Stores.

A Board of Enquiry (the Board) was appointed to investigate irregularities in the distribution of rations in the Jerusalem Area. Commencing its work on 23 August 1989, the Board found that the Distribution Team almost uniformly failed to follow the Agency rules and guidelines regulating the storage and distribution of commodities; that the Applicant "carried out no proper checking of

the figures on the distribution list sent to him by the Team Leader" and, given that he was "responsible for verification and modification of records, this was a serious dereliction of duty." The Board found that the Applicant's serious dereliction of duty constituted misconduct.

On 2 November 1989, the Director of UNRWA Operations in the West Bank informed the Applicant as follows:

> "... as the result of irregularities discovered by an audit and a Board of Enquiry into distribution of commodities with which you were involved, the Agency has decided, as a disciplinary measure, to suspend you without pay for a period of 30 days with effect from 3 November 1989, and upon completion of this suspension without pay to reassign you to another post which has yet to be identified."

On 19 December 1989, the Field Administration Officer informed the Applicant that he would be transferred to the post of Clerk "B", at the grade 6, step 20 level, at the Registration Office of the Jerusalem Area, with effect from 12 December 1989.

On 8 November 1989, the Applicant asked the Field Director to reconsider the decision to suspend him. In a reply dated 28 November 1989, the Field Director informed the Applicant that his decision would be maintained. After a further exchange of correspondence, on 21 February 1990, the Applicant wrote to the Director of Personnel at the Agency's Headquarters in Vienna, requesting that the Joint Appeals Board (JAB) be convened to examine his case. On 7 March 1990, the Director of Personnel informed the Applicant that the Secretary of the JAB had advised him that there was no basis for an appeal under area staff regulation 11.1 then in force.

On 30 April 1990, the Applicant wrote to the Field Director, requesting to be reinstated in his former post. In a letter dated 26 July 1990, the Field Administration Officer informed the Applicant that the decision to suspend him and to transfer him to another post was irrevocable.

On 26 July 1991, the Applicant lodged an appeal with the JAB. The Board adopted its report on 4 February 1992. The recommendation of the majority of the Panel reads as follows:

> "The disciplinary measure of transferring the Appellant on demotion arose on 2 November 1989 i.e. at a time when Staff Rules did not provide for dealing with an appeal case of the sort. Therefore, the Board submits and makes its recommendation to the effect that the appeal of [the Applicant] is out of time and consequently declares it as not being receivable for consideration by the Board."

In a dissenting opinion, one member of the JAB recommended as follows:

> "...
>
> 2. It remains a fact that the main objective of the Joint Appeals Board is trying to realize justice through reviewing the case(s) and making recommendations to the Commissioner-General. I am of the opinion that achieving this noble objective cannot and should not be blocked by procedural matters such as time limits, taking into consideration that the respective staff rule is flexible on this point. Please refer to staff rule 111.3(4).
>
> ..."

On 5 March 1992, the Commissioner General transmitted to the Applicant a copy of the JAB report and informed him as folows:

> "As you can see, the Board has declared that your 'appeal' is not receivable because it was submitted out of time. The Board has also considered that the cause of action arose at a time when the Staff Regulations and Rules did not provide for such remedy.
>
> I must therefore inform you that the Administration's decision of 2 November 1989, to transfer you to the post of Clerk B at the Jerusalem Health Centre will stand.
>
> ..."

On 28 August 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent's decision to suspend the Applicant was unjust and caused him financial hardship.

2. The Applicant was innocent and should not have been subject to disciplinary santions.

Whereas the Respondent's principal contentions are:

1. The Area Staff Regulations and Rules governing the Applicant's appointment at the time of its termination did not assign jurisdiction to the United Nations Administrative Tribunal, which is therefore without competence ratione materiae to entertain the present application.

2. The United Nations Administrative Tribunal is without competence ratione temporis to hear applications from UNRWA Area staff members when the cause of action arose before 14 June 1991.

3. The Applicant is without locus standi.

4. The Applicant's claim against the Respondent is time-barred.

5. The evidence demonstrates that the Respondent's imposition of disciplinary measures against the Applicant was proper.

The Tribunal, having deliberated from 27 June to 20 July 1994, now pronounces the following judgement:

I. The Applicant was suspended without pay, with effect from 3 November 1989, "as a result of irregularities discovered by an

audit and a Board of Enquiry [looking] into distribution of commodities with which [he was] involved." Later he was transferred on demotion to another post. He made a number of complaints and representations, but the Respondent maintained his decision. The Applicant's main plea was that he was innocent and had been made a scapegoat as a result of malice and intrigue against him.

II. The preliminary question which the Respondent has raised is that at the time the Applicant's wrong-doings were discovered, the Tribunal had no jurisdiction over cases involving area staff members (such as the Applicant) who were governed by the Area Staff Regulations and Rules then in force. These were later modified on 14 June 1991, but as the incidents and events under consideration occurred before this date, the Respondent asserts that the Tribunal has no jurisdiction to decide this case. The Tribunal has already dealt with these contentions in its Judgements No. 628, Shkukani (1993) and No. 650, Bakr et al, rendered today. It will not address them here.

III. The question to be determined is whether the Applicant's appeal to the Joint Appeals Board (JAB) is time-barred. According to the JAB it is. The dissenting member of the JAB expresses his concern that justice might not be done if the Respondent's argument that the Tribunal was without competence were accepted. As stated above, the Tribunal has ruled on this matter in its judgement No. 628, Shkukani and in Judgement No. 650, Bakr et al, rendered today.

However, despite the understandable concerns expressed by the dissenting member of the JAB, the Tribunal is compelled to conclude,

as the JAB itself did, that, because of the period of time which elapsed before the Applicant lodged his appeal with the JAB, it is time-barred.

(Signatures)

Samar SEN
President

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 20 July 1994

R. Maria VICIEN MILBURN
Executive Secretary